

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: David Pena
Rosa E. Cazares
3219 Logan Crest Ct.
Katy, TX 77494

CHAPTER 13

CASE NO. 10-40194-H1

DEBTORS

MOTION TO DISMISS OR CONVERT

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

David G. Peake, Chapter 13 Trustee moves the court to Dismiss or Convert the above-referenced case for the following reasons:

_____ The Chapter 13 Plan must be amended to provide for the claims of the secured and priority Creditors in full within the terms of the Plan.

 X Payments due pursuant to U.S.C. § 1326(a)(1) have not been made.

_____ Debtors failed to appear for the Meeting of Creditors and this constitutes a failure to appear in proper prosecution of the case for purposes of subsequent eligibility under 11 U.S.C. § 109.

 X The Debtors have not filed their Federal Income Tax return for the following years: 2007, 2008, AND 2009. Therefore the Debtors are not able to meet the burden of proving that the Plan complies with 11 U.S.C. § 1322 (a) (2).

_____ The Debtors have caused unreasonable delay that is prejudicial to the Creditors.

 X Other: FAILED TO PROVIDE 2009 TAX RETURN FOR SPOUSE TO THE TRUSTEE.

A HEARING WILL BE CONDUCTED ON THIS MATTER ON FEBRUARY 09, 2011 AT 1:45 PM IN U.S. BANKRUPTCY COURT, 515 RUSK, ROOM 404, 4TH FLOOR, HOUSTON, TX 77002-0000. IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY ONE DAYS AS FOLLOWS: 1. FILE A RESPONSE WITHIN TWENTY ONE DAYS THAT SHOWS THAT THE ABOVE-CITED DEFICIENCY HAS BEEN CURED, OR 2. FILE A RESPONSE WITHIN TWENTY ONE (21) DAYS THAT SHOWS THAT THE COURT SHOULD ALLOW YOU ADDITIONAL TIME TO CURE THE ABOVE-CITED DEFICIENCY. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND DISMISS OR CONVERT YOUR CASE. IF THE DEFICIENCY IS FOR FAILURE TO FILE TAX RETURNS AND THE CASE IS DISMISSED, YOU WILL NOT BE ALLOWED TO FILE ANOTHER BANKRUPTCY CASE UNTIL ALL OF YOUR RETURNS ARE FILED.

Wherefore, the Trustee requests that the case be dismissed or converted to Chapter 7, whichever shall be determined in the best interest of creditors.

Dated: January 21, 2011

/s/ David G. Peake

David G. Peake

Standing Chapter 13 Trustee

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was sent to all parties listed on the matrix on file with the Bankruptcy Clerk's Office on or about the time this document was electronically filed with the Clerk on 01/21/2011. A copy of the Certificate of Mailing of the document is on file and may be viewed at the U.S. Bankruptcy Clerk's Office.

Electronically signed by
David G. Peake, Chapter 13 Trustee

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DEBTORS

ORDER OF DISMISSAL

The Court has considered the Trustee's Motion to Dismiss and any response or opposition thereto. The court is of the opinion that proper notice to all parties in interest has been given and that the Motion should be granted. It is therefore

ORDERED that this case is dismissed.

Dated: _____

United States Bankruptcy Judge